



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG-2011-1083]

RIN 1625-AA08

Special Local Regulations; Pompano Beach Holiday Boat Parade, Intracoastal Waterway, Pompano Beach, FL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing special local regulations on the waters of the Intracoastal Waterway in Pompano Beach, Florida during the Pompano Beach Holiday Boat Parade on Sunday, December 11, 2011. The marine parade will consist of approximately 50 vessels. The marine parade will begin at Lake Santa Barbara, transit north on the Intracoastal Waterway, and end at the Hillsborough Bridge. These special local regulations are necessary to provide for the safety of life on navigable waters of the United States during the marine parade. The special local regulations consist of a series of moving buffer zones around participant vessels as they transit from Lake Santa Barbara to the Hillsborough Bridge.

Persons and vessels that are not participating in the marine parade are prohibited from entering, transiting through, anchoring in, or remaining within any of the buffer zones unless authorized by the Captain of the Port Miami or a designated representative.

DATES: This rule is effective from 5 p.m. until 10 p.m. on December 11, 2011.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG-2011-1083 and are available online by going to <http://www.regulations.gov>, inserting USCG-2011-1083 in the "Keyword" box, and then clicking "Search." They are also available for inspection or copying at the Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary final rule, call or e-mail Lieutenant Jennifer S. Makowski, Sector Miami Prevention Department, Coast Guard; telephone 305-535-8724, e-mail Jennifer.S.Makowski@uscg.mil. If you have questions on

viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the Coast Guard did not receive necessary information about this year's Pompano Beach Holiday Boat Parade with sufficient time to publish an NPRM and to receive public comments prior to the event. Any delay in the effective date of this rule would be contrary to the public interest because immediate action is needed to minimize potential danger to marine parade participants, participant vessels, spectators, and the general public.

For the same reason discussed above, under 5 U.S.C. 553(d)(3) the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the Federal Register.

Basis and Purpose

The legal basis for the rule is the Coast Guard's authority to establish special local regulations: 33 U.S.C. 1233.

The purpose of the rule is to insure safety of life on navigable waters of the United States during the Pompano Beach Holiday Boat Parade.

Discussion of Rule

On December 11, 2011, Greater Pompano Beach Chamber of Commerce is hosting the Pompano Beach Holiday Boat Parade on the Intracoastal Waterway in Pompano Beach, Florida. The marine parade will consist of approximately 50 vessels. The marine parade will begin at Lake Santa Barbara, transit north on the Intracoastal Waterway, and end at the Hillsborough Bridge. Although this event occurs annually, and special local regulations have been promulgated in the Code of Federal Regulations at 33 CFR 100.701, the date of the marine parade does not correspond with the date published in the Code of Federal Regulations, and the special local regulations have been modified. Therefore,

the special local regulations set forth in 33 CFR 100.701 are inapplicable for this year's Pompano Beach Holiday Boat Parade.

The special local regulations consist of a series of buffer zones around vessels participating in the Pompano Beach Holiday Boat Parade. These buffer zones are as follows: (1) all waters within 75 yards of the lead marine parade vessel; (2) all waters within 75 yards of the last marine parade vessel; and (3) all waters within 50 yards of all other marine parade vessels. Notice of the special local regulations, including the identities of the lead marine parade vessel and the last marine parade vessel, will be provided prior to the marine parade by Local Notice to Mariners and Broadcast Notice to Mariners. These special local regulations will be enforced from 5 p.m. until 10 p.m. on December 11, 2011. Persons and vessels are prohibited from entering, transiting through, anchoring, or remaining within the buffer zones unless authorized by the Captain of the Port Miami or a designated representative. Persons and vessels desiring to enter, transit through, anchor in, or remain within any of the buffer zones may contact the Captain of the Port Miami by telephone at 305-535-4472, or a designated representative via VHF radio on channel 16, to request authorization. If

authorization to enter, transit through, anchor in, or remain within any of the buffer zones is granted by the Captain of the Port Miami or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Miami or a designated representative.

Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

Regulatory Planning and Review

Executive Orders 13563, Improving Regulation and Regulatory Review, and 12866, Regulatory Planning and Review, direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a significant regulatory action under section 3(f) of Executive Order 12866.

Accordingly, the Office of Management and Budget has not reviewed this regulation under Executive Order 12866.

The economic impact of this rule is not significant for the following reasons: (1) the special local regulations will be enforced for only five hours; (2) although persons and vessels will not be able to enter, transit through, anchor in, or remain within the buffer zones without authorization from the Captain of the Port Miami or a designated representative, they may operate in the surrounding area during the enforcement period; (3) persons and vessels may still enter, transit through, anchor in, or remain within the buffer zones if authorized by the Captain of the Port Miami or a designated representative; and (4) the Coast Guard will provide advance notification of the special local regulations to the local maritime community by Local Notice to Mariners and Broadcast Notice to Mariners.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in

their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule may affect the following entities, some of which may be small entities: the owners or operators of vessels intending to enter, transit through, anchor in, or remain within that portion of the Intracoastal Waterway encompassed within the special local regulations from 5 p.m. until 10 p.m. on December 11, 2011. For the reasons discussed in the Regulatory Planning and Review section above, this rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the

Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the

expenditure by a State, local, or Tribal government, in the aggregate, or by the private sector of \$100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have Tribal implications under

Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory

activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2-1, paragraph (34)(h), of the Instruction. This rule involves special local regulations issued in conjunction with a marine

parade. Under figure 2-1, paragraph (34)(h), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100--SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233.

2. Add temporary § 100.35T07-1083 to read as follows:
§100.35T07-1083 Special Local Regulations; Pompano Beach Holiday Boat Parade, Intracoastal Waterway, Pompano Beach, FL.

(a) Regulated Areas. The following buffer zones are regulated areas during the Pompano Beach Holiday Boat Parade: all waters within 75 yards of the lead marine parade vessel; all waters within 75 yards of the last marine parade vessel; and all waters within 50 yards of all other marine parade vessels. The identities of the lead marine parade vessel and the last marine parade vessel will

be provided prior to the marine parade by Local Notice to Mariners and Broadcast Notice to Mariners. The marine parade will begin at Lake Santa Barbara, transit north on the Intracoastal Waterway, and end at the Hillsborough Bridge.

(b) Definition. The term "designated representative" means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the Captain of the Port Miami in the enforcement of the regulated areas.

(c) Regulations.

(1) All persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the regulated areas unless authorized by the Captain of the Port Miami or a designated representative.

(2) Persons and vessels desiring to enter, transit through, anchor in, or remain within the regulated areas may contact the Captain of the Port Miami by telephone at 305-535-4472, or a designated representative via VHF radio on channel 16, to request authorization. If authorization to enter, transit through, anchor in, or remain within the regulated areas is granted by the Captain of the Port Miami or a designated representative, all persons and vessels

receiving such authorization must comply with the instructions of the Captain of the Port Miami or a designated representative.

(3) The Coast Guard will provide notice of the regulated areas by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

(d) Enforcement Date. This rule will be enforced from 5 p.m. until 10 p.m. on December 11, 2011.

Dated: November 22, 2011

C. P. SCRABA
Captain, U.S. Coast Guard
Captain of the Port Miami

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